

## Remarks

1. This office action response is submitted contemporaneously with the Applicants' *Request for Continued Examination*, and the Applicants' request that the final rejection holding be withdrawn. This response is filed within a fourth month, and a one-month extension is requested making a one-month extension fee payment of \$60.00 due. Request is made that a continued examination fee in the amount of \$395.00 and a one-month extension fee of \$60.00 be debited against the Davis & Jack, L.L.C. USPTO Deposit Acct. No. 50-0550.

2. The Examiner has rejected Claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,836,739 issued to *Cappelletto*. Claim 1 has been cancelled, and no further response is required.

3. The Examiner has rejected Claim 2 as being anticipated by U.S. Patent No. 4,579,505 issued to *Lauritsen*. Claim 2 has been cancelled, and no further response is required.

4. The Examiner has rejected Claim 3 under 35 U.S.C. § 102(b) as being anticipated by *Lauritsen '505*. The Applicants respectfully traverse said rejection, and request that the Examiner, upon review of the Amendment to Claim 3 set forth above, and upon further review of the traversing arguments set forth below, decline to extend said rejection to Amended Claim 3. Traversing arguments follow:

### Argument Traversing Novelty Rejection of Claim 3

Unamended Claim 3 included two separate and distinct structural limitations, they being a tire cradle and a pivoting means. The Examiner has identified the wheel carriage 4 of *Lauritsen's* car tumbler as being both a tire cradle and a pivoting means. (See pg. 5 of the Examiner's August 19, 2005 *Detailed Action*.) Unamended Claim 3 included further limitations specifying three operative connections of the pivoting means, they being:

- 1) pivoting means operatively connected to left side of cradle;
- 2) pivoting means operatively connected to right side of cradle; and
- 3) pivoting means operatively connected to forward end of the lift arm.

The Examiner's *Detailed Action* does not expressly find and designate each of the three operative connections of unamended Claim 3 within the car tumbler of *Lauritsen*. The Applicants respectfully assert that the Examiner could have properly concluded that *Lauritsen's* tire cradle/wheel carriage 4 did not also teach a separate pivoting means element. No pivot is associated with that structure and, to the extent that *Lauritsen's* wheel carriage may be dually characterized as a pivoting means, its pivoting means aspect is not operatively connected as was required by unamended Claim 3. Accordingly, the Applicants respectfully asserts that the Examiner could have appropriately found that unamended Claim 3 was not anticipated by *Lauritsen*, and the Examiner could have appropriately allowed unamended Claim 3.

In order to more clearly distinguish the instant invention from *Lauritsen's* car tumbler, Claim 3 has been amended to further specify, in place of "pivoting means", "means for pivoting the tire cradle with respect to the lift arm". Such means is clearly described in the specification and drawings of the instant application, and no new matter is inserted into the application by virtue of said Amendment.

Referring to *Lauritsen's* Drawing Fig. 1, it can be seen that the car tumbler's wheel carriages 4 are rigidly (as opposed to pivotally) attached to the forward ends of the lift arms/rocker arms 1. The function of *Lauritsen's* car tumbler depends upon the non-pivoting character of its wheel carriage 4. If the rigidly attached wheel carriages 4 were to undergo any pivoting motion, a catastrophic failure of the apparatus would result, allowing a car to fall from the wheel carriages 4. Therefore, the Applicants respectfully request that the Examiner find that *Lauritsen* does not teach any means for pivoting its wheel carriages 4 with respect to its lift arms.

According to the Federal Circuit, anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. See *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983). However, it is not enough that the reference disclose all the claimed elements in isolation. Rather, as held by the Federal Circuit, the prior art reference must disclose each element of the claimed invention arranged as in the claim. See *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). *Lauritsen's* wheel carriages 4 do not include any sort of pivoting structure. Therefore, following *W.L. Gore & Associates, supra*, the

Examiner should decline to extend the anticipation rejection of unamended Claim 3 to Amended Claim 3.

If the Examiner finally concludes that *Lauritsen's* wheel carriages 4 teach a pivoting means, the Examiner should still conclude that such means does not pivot the wheel carriages 4 with respect to the lift arms as required by Amended Claim 3. Any pivoting means found in *Lauritsen's* car tumbler is not arranged in the manner required by Amended Claim 3. Therefore, following *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, supra, the Examiner should, in any event, decline to extend the novelty rejection of unamended Claim 3 to Amended Claim 3.

Amended Claim 3 has also been written in independent form to include all of the limitations and restrictions of cancelled Claims 1 and 2 from which Claim 3 formerly depended.

Wherefore, the Applicants respectfully request that the Examiner allow Amended Claim 3.

5. The Examiner has similarly rejected Claims 4-5 under 35 U.S.C. § 102(b) as being anticipated by *Lauritsen '505*. Each of Claims 4 and 5 depend from Amended Claim 3, they each having Amended Claim 3 as a common parent claim. Therefore, arguments set forth above in support of a decision by the Examiner to decline to extend the novelty rejection of unamended Claim 3 to Amended Claim 3 are here restated in support of allowance of dependent Claims 4 and 5. Upon allowance of Amended Claim 3, the Applicants respectfully request that the Examiner allow dependent Claims 4 and 5.

6. The Examiner has rejected Claims 6-11 under 35 U.S.C. § 103(a) as being unpatentable over *Lauritsen '505* in view of *Stone '721*. Each of Claims 6-11 depends from Amended Claim 3, they each having Amended Claim 3 as a common parent claim. Therefore, arguments set forth above in support of a decision by the Examiner to decline to extend the novelty rejection of unamended Claim 3 to Amended Claim 3 are here restated in support of allowance of dependent Claims 6-11. Upon allowance of Amended Claim 3, the Applicants respectfully request that the Examiner allow dependent Claims 6-11.

7. In the event an Examiner's Amendment would result in allowance of any or all claims, the Applicants invite and would welcome such an amendment.

## **Request for Payment of Fees by Deposit Account**

### *Authorization to Debit Deposit Account:*

Request is made that a Continued Examination fee in the amount of \$395.00 be debited against the Davis & Jack, L.L.C. USPTO Deposit Acct. No. 50-0550

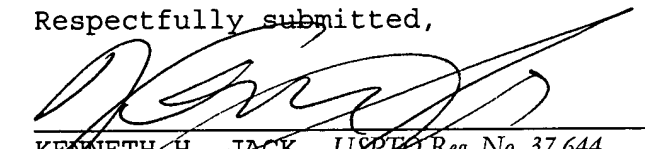
Request is made that a one-month extension fee in the amount of \$60.00 be debited against the Davis & Jack, L.L.C. USPTO Deposit Acct. No. 50-0550

In the event that it is determined that any further payment of fees is necessary to the receipt and filing of the within response, authorization is given to withdraw from the Davis & Jack, L.L.C. USPTO Deposit Acct.

**Prayer**

WHEREFORE, the Applicants, Larry D. Morris and Terry L. Emond, respectfully request that pending Claims 3-11 be allowed.

DATED: November 30, 2005. Respectfully submitted,



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